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Supreme Court of the United States

October Term, 1954
No. 312

GRAYSON-ROBINSON STORES, INC.,
Appellant,

vs.

THE LIONEL CORPORATION,
Appellee.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

MOTION TO DISMISS

SAMUEL VOLTAGGIO, Esq.,
of Newark, New Jersey,
Attorney for Appellant.

ANTHONY CALANDRA, Esq.,
of Newark, New Jersey,
of Counsel.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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Appellee in the above-entitled case moves to dismiss on the ground that the appeal does not present any question that has not heretofore been decided by this Court, and that the questions presented by Appellant are so unsubstantial as not to need further argument.

Statement

This is a direct appeal from the Final Judgment of the Supreme Court of New Jersey (15 N. J. 191, 104 A. 2nd 304). A perusal of this opinion will reveal that the questions presented by the Appellant have been explicitly decided by prior decisions of the Supreme Court of the United States so that there is no room for real controversy. *Equitable Life Assurance Society* v. *Brown,* 187 U. S. 308, 311. This appeal therefore should be dismissed. *Zucht* v. *King,* 260 U. S. 174; *Palmer Oil Corp.* v. *Amerada Corp.,* 343 U. S. 390.

Argument

The Appellant's Statement reveals that no error on the part of the Supreme Court of New Jersey is alleged but that substantially this Court should overrule the *Old Dearborn Case*, 299 U. S. 183, and in addition raises a frivolous point, to wit, that the McGuire Act (which was passed by the Congress of the United States in 1952 to exempt fair-trade contracts from the operation of the Sherman Anti-Trust Law and making this exemption binding upon signers and non-signers of fair-trade agreements, is unconstitutional.

The appeal of the Appellant is predicated upon a misconception of fair-trade practices and of the basic philosophy that underlies fair-trade legislation. Forty-five (45) states have enacted laws to protect the consumer, trade-mark owners, and distributors against deceptive, injurious, and uneconomic practices in the distribution of articles of standard quality under a distinguishing trademark, brand or name. These laws are generally known as "Fair Trade Acts".

They permit a manufacturer of a trade-marked or brand-name product to safeguard his investment, his reputation and his hard-earned consumer and distributor good will. Such a manufacturer is permitted to establish, *voluntarily*, a minimum retail price below which his product, in competition with other products of the same general class, may not be sold.

The enactment of Fair Trade Laws became necessary in order to protect the consumer, retailers, and manufacturers, of trade-marked or brand-named products, from the disastrous effects of loss-leader selling and predatory price manipulation, made possible by relatively modern methods of distribution.

Under early systems of merchandising, the sale for consumption was a transaction strictly between two parties—

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the retailer and the consumer. Goods were sold in bulk without identification of source and at prices determined by a process of bargaining participated in by the consumer and the retailer. Quality and prices, both of major interest to the consumer, were not always constant factors.

The advent of the *one-price* store (*i. e.*, a standard price for a product to every purchaser) tended to remove the matter of price from the realm of uncertainty, but the consumer still had no assurance of quality except the retailer's word or reputation.

Not until the sale of trade-marked or brand-named goods in original packages at uniform prices became an accepted method of merchandising did the standards of value in retail trade become fully secured to the consumer.

This newly created standard of values resulted in a shift in the focal point of the consumer's attention away from the retailer toward the manufacturer whose trade-mark the article bore—with a consequent creation of certain legal rights and obligations for the latter.

Today a sale of branded goods, as distinguished from the old sale in bulk, is essentially a transaction between two principals—the manufacturer and the consumer. The manufacturer himself succeeds in doing a large part of the selling. He packs his goods, determines, standardizes, vouches for, and is legally responsible for, their quality, and he advertises them in competition with similar goods of competing manufacturers.

FROM THE VIEWPOINT OF THE CONSUMER, THE SALE OF TRADE-MARKED OR BRAND-NAME GOODS IS ACTUALLY MADE BEFORE HE EVER ENTERS THE RETAILER'S STORE.

In the business sense, the retailer is but an agent for the manufacturer, a conduit to the purchaser. If the manufacturer, through his efforts—for which he alone is responsible—succeeds in creating consumer demand for his product, he acquires good will for his product and name.

Take away from an article which now has or hereafter may gain consumer acceptance the brand-name or trade-mark of the manufacturer that produces it and immediately the incentive for the manufacturer to put into that article the maximum of quality, durability, and style, and to make possible its sale at retail at the lowest possible prices to great numbers of consumers, is gone.

The trade-mark or brand-name is the implement for telling consumers generally the quality, durability, and style, consistent with the minimum price, which the manufacturer of an article bearing his trade-mark puts into that article in order to sell it to consumers directly or indirectly through the wholesalers or retailers. *Competition* is the *life of trade*, but the *trade-mark or brand-name is the life of competition.*

The price manipulating retailer does not operate a charitable enterprise. Through price manipulation, he hopes to achieve either or both objectives; (1) To increase store traffic with the expectation that customers entering his place of business to avail themselves of a "bargain" will at the same time purchase other unrelated articles upon which there is a good margin of profit; (2) to avoid the selling of well-known brand-name items, he advertised, at reduced prices, by switching customers to unknown substitutes upon which he will realize a higher profit. The price manipulator loses a little on a handful of "leaders" while making up this planned loss on less-known overpriced merchandise. *The "loss-leader" is but a "mis-leader."*

On the other hand, his conduct has a very serious effect upon trade-mark owners, competing retailers, and the consuming public.

In order adequately to serve his purpose, the price manipulator is compelled to use as a loss leader an "*Identified Article*" which has already gained wide consumer acceptance and with which the consuming public has come to associate constant quality and reasonable uniformity of

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retail price. Consumer "pull" is achieved only by dangling the lure of an extraordinary bargain, and, since unbranded merchandise furnishes but scant opportunity for price comparison and no guarantee of quality, it is useless as a loss leader. A shining "bait" is indispensable for the price-jockey.

But the price manipulator cannot indefinitely maintain the low price, and he has no inclination to do so except spasmodically when it is to be used as a "lure" or "bait".

The consumer is further injured if a manufacturer, in self-defense, reduces the quality of his product, so he may sell his dealers at a lower price and thereby enable all of them in turn to sell at the old "bait-price" and at the same time maintain a reasonable operating margin on the product.

The net effect of price manipulation is not a lasting benefit to the consumer for it causes the manufacturer to lose markets. The manufacturer is then compelled to make smaller quantities of the product and his costs of manufacture and distribution per piece or per package go up. Continued long enough this means he must either raise his prices and thus further curtail his market, or attempt to recover his market by lowering his prices and diluting quality, thus greatly lessening the value to the consumer. Here is obvious inefficiency and waste in the distribution system for which the consumer ultimately pays.

Straightforward retailers who do not attempt to deceive the consumer through use of a price-manipulation formula find that price comparisons on the bait product favor their competitors. So these straight-forward retailers who normally account for 90% or more of the product's distribution—stop featuring the product or may even discontinue stocking it. Instead of cooperating with their manufacturer to push the sale of his goods, they actually reach the point of urging a customer to accept

some other brand. Their resentment is directed toward the manufacturer and is intensified because some of their customers, attracted to a price-manipulating store by bait of a well-known product at a deceptive price, may transfer all of their patronage to the price-manipulating store, *on the assumption that the price-manipulator sells all other products at bargain prices.* A handful of price-manipulators may thus destroy a manufacturer's market while injuring straight-forward retailers and the consuming public.

The consumer who has a deeply cut price flaunted before him is led to believe that the article is worth no more than is charged by the price-manipulator and that heretofore either the producer or the straight-forward retailer, or both, have been realizing an undeserved profit at his expense. The value of the product, in his eyes, is immediately and appreciably debased. He then becomes more susceptible to the suggestion of the price-manipulator to purchase an unknown, unbranded product upon the representation that it is equal or superior to the brand-name product.

Price manipulation, which thus causes a shift in dealer and consumer attitude toward the manufacturer and his product, is rarely sponsored by the manufacturer. Nevertheless, because of it, he has lost a part of his market, possibly an essential part if profitable operation is to be maintained. True, the manufacturer may attempt to recover his market by advertising so extensively that consumer demand compels dealers to carry the merchandise, but this can be an unnecessary economic waste which he cannot afford.

Instead of increasing sales of the bait item, however, as might normally be expected to result from the publicity afforded the product, even in the price-manipulator's store, the normal flow of the manufacturer's merchandise is strenuously lessened by the price-manipulator's switching of purchasers to substitutes.

The price-manipulator does not operate a charitable enterprise. No retailer sells a $1.00 bill for fifty cents because of his love of the consumer. Such a retailer takes a planned loss of fifty cents in order to attract store traffic and ensnare the consumer. The planned loss of fifty cents is made up many times over through the sale of overpriced, unknown-quality merchandise. Other sharp-practice retailers prefer to be called "price-cutters", "discount-house operators", "cut-rate stores", "I-can-get-it-for-you-wholesale" operators. Their formula is the same, the approach more subtle. Instead of baiting the consumer by offering a $1.00 bill for fifty cents, they employ a well-known, consumer-preferred, fair priced product of quality, utility, and integrity, and use it as the loss leader. In doing so they steal the good-will of the manufacturer in his trade-marked product. Through price manipulation the shady operator is unjustly enriched at the expense of the consumer, the manufacturer, and the straight-forward retailer. Because the price-manipulator's formula is deceptive, uneconomic and results in the over-all gouging of the consumer, Fair Trade laws have been passed by 45 state legislatures to protect the public's interest from this adroit type of fraud and deception. The price-manipulator of Fair-Traded products in states having Fair Trade laws is not a philanthropist but by law is guilty of "unfair competition" and the committor of a Tort, made actionable by statute.

No state has ever repealed a Fair Trade Act. Technically, passage of a revised Fair Trade Act repeals by reference the Old Act, so that both Acts will not be in effect at the same time. This is parliamentary procedure and is not peculiar to Fair Trade.

For many years, producers of trade-marked articles sought to combat such injurious practices. Various methods were used, but none of them proved completely effective.

The logical answer to this problem appeared to be the enactment of statutes that would permit a manufacturer to establish resale prices of his trade-marked goods.

The first Fair Trade law was enacted in California in 1931. At that time it did not provide that the specified prices should be binding on non-contracting parties, but this omission was corrected by an amendment in 1933.

Since 1933, the Fair Trade movement has spread rapidly and now 45 states have enacted Fair Trade laws, the exceptions being Missouri, Texas and Vermont. The District of Columbia also does not have a Fair Trade Act.

In 1936, the constitutionality of such statutes was upheld unanimously by the U. S. Supreme Court in *Old Dearborn Distributing Company* v. *Seagram-Distillers Corp.*, 299 U. S. 183; and in *Kunsman* v. *Max Factor and Company*, 299 U. S. 198.

In 1937, Congress passed the Miller-Tydings Amendment to the Sherman Anti-Trust Act (15 U. S. C. A. #1). Briefly, this amendment provides that nothing in the Sherman Act shall make illegal resale price-maintenance contracts for a trade-marked or brand-name product where these goods move in interstate commerce, if the state of resale has a Fair Trade Act.

Because of the holding of the U. S. Supreme Court in *Schwegmann Bros.* v. *Calvert Distillers Corporation*, 341 U. S. 384, 19 A. L. R. 2nd 1119 (1952), to the effect that the Miller-Tydings Act only exempted "signers" of a minimum price-fixing agreement from the interdiction of the Sherman Anti-Trust Act, Congress passed the McGuire Act which exempted "non-signers" as well as signers, 15 U. S. C. A. #45. The McGuire Act became effective on July 14, 1952.

Under Fair Trade laws, any manufacturer of a competitive brand-name product may protect his consumers, his

resellers and the integrity of his product through Fair Trade. He may establish, with due regard to competitive values, resale prices for his products. Those prices may be altered by the manufacturer at any time to meet competitive or other conditions.

The manufacturer therefore can proceed confidently to improve the quality of his product. Often a product improvement which may add but a small percentage to its cost of production may add largely to its value with relation to retail price.

Outstanding values tend to induce demand. As volume increases, reductions in overhead costs per unit may more than compensate for the small increase in prime costs occasioned by the incorporation in the product of such an improvement.

Resellers who rely primarily on the deceptive loss-leader formula complain loudly that "Fair Trade" violates the principle of a "free market". They shout the virtues of so-called "unrestricted competition". The result is destructive "dog-eat-dog" business practices.

Without the protection of Fair Trade the manufacturer of a popular product selected by retailers as "price bait" is the victim of competition that has "no relation to product value". The competition is for "consumer traffic" through the store. The consumer has never been adequately conscious of the fact that the loss incurred by the retailer on the loss leader must be, and is, made up on other merchandise sold by the store at excessive prices.

The "honored" product selected as a loss leader loses support of smaller neighborhood stores in the area affected. That support may have produced as much as 95% of the sales volume of the product in the particular area. Certainly that neighborhood-store support has been a big factor in building the popularity of the product.

A manufacturer, to stay a little longer in business under unrestrained price-bait pressures, often must cheapen his product arbitrarily, usually without noticeably altering its appearance.

What the public does not know is that an arbitrary reduction even of 5% in the manufacturing cost of a product may reduce its value—its "mileage" per dime of retail price—by as much as 50%.

In such dog-eat-dog competition the consumer invariably gets the worst of it. Wage pressures, of necessity, are downward in the factories affected. Wages buy less real values as the predatory retailer fattens—naturally entirely on the dimes and dollars of the consumers. The predatory retail-price manipulator refers to his price bait as "bargains", "savings", and "economies". Those three words appeal strongly to the frugal American housewife. When used with such intent, they blind her effectively to a common device for the extension of what is perhaps the most vicious form of monopoly—which is monopoly of distribution. The distributive monopolist interposes his controls between the consumer and the sources from which must come the things the consumer needs and wants. The distributive monopolist, once entrenched, therefore, is able to extort at will from the consumer—while dictating prices and product—quality dilutions to the supplier—all in the process of stifling the competition of the smaller reseller.

Fair Trade is basically sound because our economy is propelled by individual incentive. Economic momentum is determined by the sum of all the extraordinary efforts of individuals impelled by hope of personal profit through creative and productive contributions.

Given a substantial measure of protection against theft of the fruits of his diligence—given a sporting chance to win and hold a competence—man becomes resourceful, and learns to cooperate with others in creative and productive enterprise.

So long as he retains his confidence in the stability of laws that protect his profits and his property, man grows in creative and productive strength and skill.

Blast away his protection from piracy, or permit it to decay and he loses all incentive to invent, to produce—or to accumulate.

Fair Trade laws form an important protective pattern in the general network of obstructions to commercial piracies. Upon the tenacity of these obstructions the economic strength of our nation, and its power for defense, must depend.

Resale price maintenance, which is all that the Fair Trade laws permit, involve parties who do not compete with each other; that is, the owner of a trade-mark or brand name on the one hand and the distributors—wholesale or retail—who voluntarily elect to handle the Fair-Traded product.

The trade-mark owner is not permitted to utilize Fair Trade unless his product is in free and open competition with other commodities of the same class. If the Fair-Trading manufacturer specifies an excessive resale price, competition from other trade-mark owners producing similar goods will force down that price. Competition is not nullified.

The Fair-Traded product alone carries the responsibility for its value with relation to its retail price. If that value is not competitive the manufacturer is forced to reduce his price or improve his quality—to maintain and increase his sales volume. Competition may be thrown against the product by Fair-Traded products carrying the brand of the store, or competition may come from products carrying a manufacturer's brand but not Fair-Traded. And competition may come from products carrying no brand at all.

The pretense that Fair Trade pricing eliminates competition between retailers is spurious because any one retailer may choose freely other products with which to contest for the favor of the customers of his competitors.

If the dealer does not have that option the product cannot be Fair-Traded.

True, predatory retail price competition is restricted under Fair-Trade, but only as to the established price of a Fair-Traded product. Competition between retailers remains—in service, sales promotion, salesmanship, display advertising; and is intensified at the real source of all competition, at the manufacturers' level—where brand responsibility to the public is centered and where the value of large investments in manufacturing facilities depends upon the competitive values offered to the public in the product.

The basic competition is, and, in the public interest, should be, between manufacturers of rival brand-name products. This competition exists not only as to price, but as to utility, integrity and quality of product.

The Courts have held uniformly that *a retailer owns the physical product* but does *not own the good-will* as evidenced by the trade-mark or brand name of the product.

It is that good-will alone that makes the product useful as store-traffic lure. A manufacturer's trade-mark or brand name represents his pride in the quality of his product, an acknowledgment to the world that he stands behind his product, an identification and invitation to purchase the product in the future. That is why investment in advertising trade-marked or brand-name products can be justified.

The consumer's preference for a competitively priced, properly distributed, and vigorously advertised product of utility, integrity and quality sums up in going good-will values in the trade-mark or brand name owned by the manufacturer.

The Supreme Court of the United States and the highest Courts of 16 states have declared the Fair Trade Acts constitutional. The U. S. Supreme Court held that the Fair Trade Act was not a price-fixing statute (*Old Dearborn Distributing Co.* v. *Seagram-Distillers Corporation* (1936), 299 U. S. 183). This Court pointed out that the Fair Trade Act does not prevent a purchaser of a commodity bearing a trade-mark or brand name from selling the commodity at any price he chooses unless the purchaser sells with the aid of the good-will of the manufacturer. The Fair Trade Act is designed to protect that good-will against injury. The U. S. Supreme Court said:

> "We are here dealing not with a commodity alone, but with a commodity plus the brand or trade-mark which it bears as evidence of its origin and of the quality of the commodity for which the brand or trade-mark stands. Appellants own the commodity; they do not own the mark or the good will that the mark symbolizes. And good will is property in a very real sense, injury to which, like injury to any other species of property, is a proper subject for legislation. Good will is a valuable contributing aid to business—sometimes the most valuable contributing asset of the producer or distributor of commodities. And distinctive trade-marks, labels and brands, are legitimate aids to the creation or enlargement of such good will * * *. The ownership of the good will, we repeat, remains unchanged, notwithstanding the commodity has been parted with * * *."

Fair Trade is voluntary. The manufacturer may voluntarily establish a minimum resale price for his trade-marked or brand-name product provided it is in competition with other products of the same general class produced by others. The consumer may voluntarily purchase this product or

may reject it and voluntarily purchase competitive products. The contracting reseller voluntarily signs the Fair Trade agreement. The non-contracting reseller voluntarily purchases Fair-Traded goods, knowing that a minimum resale price has been established.

The Supreme Court of the U. S. clearly pointed this out in the *Old Dearborn* case, 299 U. S. 183. The Court said:

> "Appellant here acquired the commodity in question with full knowledge of the then existing restrictions in respect of price which the producer and wholesale dealer had imposed, and, of course, with presumptive if not actual knowledge of the law which authorized the restriction. Appellants were not obliged to buy; and their voluntary acquisition of the property with such knowledge carried with it, upon every principle of fair dealing, assent to the protective restriction, with consequent liability under section 2 of the law by which such acquisition was conditioned."

The primary aim of the Fair Trade statute is to protect the good-will of the trade-marked or brand-named product. Accordingly, the U. S. Supreme Court in the *Old Dearborn* case, *supra*, held that:

> "there is nothing in the Act to prevent the purchaser from removing the mark or brand from the commodity—thus separating the physical property, which he owns, from the good will, which is the property of another—and then selling the commodity at his own price, provided he can do so without utilizing the good will of the latter as an aid to that end."

The Supreme Court of the U. S. in 1936 in *Old Dearborn* unanimously declared the Fair Trade Act constitutional and such illustrious jurists as Chief Justice Hughes, Justice

Brandies and Justice Cardozo participated in this decision. The Supreme Court declared:

1. The primary aim of the Fair Trade Act is to protect the property—the good-will—of the manufacturer.

2. The retailer owns the physical commodity but does not own the trade-mark or good-will that the mark symbolizes.

3. The ownership of the good-will remains in the manufacturer although title to the physical commodity has passed to the retailer.

4. The Fair Trade Act is not a price-fixing Act. (Fair Trade Acts prohibit price fixing.)

5. The Fair Trade Act does not delegate price-fixing power to private individuals but permits trade-mark or brand-name owners to establish by contract minimum resale prices, provided the product is in free and open competition with similar commodities.

6. The Fair Trade Act does not prevent the retailer from selling the physical commodity at any price the retailer wishes. A manufacturer's minimum price schedule applies only when the retailer sells with the aid of the good-will of the manufacturer.

7. The retailer may remove the trade-mark or brand-name from the commodity, thus separating the physical property which the retailer owns from the good-will which the manufacturer owns, and sell the physical commodity at any price the retailer chooses, provided the retailer can do so without utilizing the good-will of the manufacturer as an aid in selling the product.

8. Since the non-contracting retailer acquires the Fair Traded commodity with knowledge of the minimum resale-price restrictions, the voluntary acquisition of the Fair

Traded commodity by the non-contracting retailer carries with it assent to the minimum resale price restrictions.

It should be pointed out that laws prohibiting larceny protect the manufacturer against the theft of his physical property. Fair Trade Laws merely protect the manufacturer against the theft of perhaps his most valuable asset —though intangible—*his good-will.* The good-will of the consumer for the manufacturer's trade-mark or brand-name may perhaps be the sole reason for the sale. This good-will may be weakened or destroyed by price manipulation or price manipulators.

Congress in 1937 enacted the Miller-Tydings Amendment to the Sherman Anti-Trust Act. It is not a "Federal Fair Trade Act". The Miller-Tydings Amendment merely makes lawful the employment of the Fair Trade Act of one state by a citizen of another state.

Through the enactment of the Miller-Tydings Act, Congress signified its recognition of the overwhelming conviction by the individual states that Fair Trade is in the public interest. It eliminated any possible question of illegality over resale price maintenance in interstate commerce or as an unfair method of competition under Section 5 of the Federal Trade Commission Act. (Cf. *Dr. Miles Medical Company* v. *John D. Park and Sons Company* (1911), 220 U. S. 373; *Federal Trade Commission* v. *Beechnut Packing Company* (1922), 257 U. S. 441.)

The Miller-Tydings Amendment provided that nothing in the Sherman Act shall render illegal resale-price maintenance contracts where the commodities move in interstate commerce when the state of resale has a Fair Trade statute. The amendment also provides that the making of such contracts shall not be considered an unfair method of competition under Section 5 of the Federal Trade Commission Act.

However, the Amendment specifically provides that it shall not legalize price maintenance agreements between manufacturers or between distributors who are in competition with each other. By the very fact that this act is an amendment of Section 1, Sherman Anti-Trust Act, the Act of July 2, 1890, see 15 U. S. Code, Sec. 1, as amended, is proof positive that this Act was not nor was it intended to be a Fair Trade Act, so that any attack on this Act or its successor, the "McGuire Act" for lack of constitutionality becomes an idle and futile gesture because the power of Congress to alter, amend or even repeal the Sherman Anti-Trust Act cannot be open to doubt or question. It therefore becomes incumbent on an opponent of Fair Trade Laws to question the constitutionality of the State Fair Trade Act.

The Supreme Court of the U. S. in *Schwegmann Bros. et al.* v. *Calvert Distillers Corp.*, 341 U. S. 384, in an opinion by Mr. Justice Douglas held; since the Miller-Tydings Act did not contain any non-signer provision that it should be construed as sanctioning only "contracts or agreements". This is the extent of this decision insofar as Fair Trade Law is concerned.

Congress removed any and all doubts which Justice Douglas raised in his opinion by the passage of the McGuire Act in July 1952 (see 15 U. S. C. A. #45).

The Federal 5th Circuit Court of Appeals in *Schwegmann Brothers Giant Super Market et al.* v. *Eli Lilly & Company* (June 30, 1953), 205 Fed. Rep. 2nd 788, rejected challenges to the constitutionality of the Louisiana Fair Trade Law and to the McGuire Act. It said (on p. 791):

> "The Schwegmann Case related to the interpretation of the Sherman Anti-Trust Act as amended by the Miller-Tydings Act * * * with respect to the enforcement of state fair trade laws in interstate

> commerce. The Court decided that the intention of Congress was to authorize interstate enforcement against the signers of an express contract or agreement but not against nonsigners. To meet that decision, as has been said, Congress passed the McGuire Act."

The 5th Circuit Court further said in the next paragraph:

> "There is no implication in Schwegmann that Congressional approval of enforcement against nonsigners would be unconstitutional; the implications are to the contrary."

Certiorari was denied by the U. S. Supreme Court, 346 U. S. 856.

The McGuire Act (and also the Miller-Tydings Act) is an "enabling" act. It is not a federal Fair Trade Statute. It permits the application and enforcement of state Fair Trade laws—including the non-signer provision of such laws—with regard to interstate transactions. Since the New Jersey Fair Trade Act does contain a non-signer provision, the McGuire Act removes the objection of the *Schwegmann* case (341 U. S. 384) to enforcement against non-signers in interstate matters.

Furthermore, assuming that an independent interpretation could be made, it is still incomprehensible how the conclusion that the McGuire Act is "ineffective" can be reached in view of the fact that it is not a Fair Trade Act at all but merely an enabling act passed to overcome the objections of the U. S. Supreme Court in the first *Schwegmann* case to the enforcement at that time of non-signer provisions in Fair Trade Acts insofar as interstate commerce was concerned and especially in view of the fact that

Old Dearborn and our Supreme Court in *Johnson & Johnson* v. *Charmley Drug Co., supra,* ruled that non-signers could constitutionally be made to comply with Fair Trade Acts.

It is respectfully submitted, therefore, that the Appellant presents no substantial question for the decision of this Court, and that the appeal should be dismissed.

SAMUEL VOLTAGGIO, Esq.,
of Newark, New Jersey,
Attorney for Appellant.

ANTHONY CALANDRA, Esq.,
of Newark, New Jersey,
of Counsel.